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ABSTRACT

In addition to analyses to two decisions on right to treatment (Donald v. O'Connor and Wyatt v. Aderholt), the journal considers 10 new cases, updated information on 34 cases reviewed in previous issues, and 31 other cases dealing with legal rights of handicapped persons. Summaries of new cases include Ohio's Davis v. Watkins (right to treatment), Indiana's Sonnenburg v. Bowen (right to just compensation for labor) and California's West v. Secretary of Defense, (right to education). Updated information is given on such cases as Alabama's Wyatt v. Stickney (right to treatment), California's Larry P.V. Riles (right to fair classification), Ohio's Driscoll v. Goldberg (exclusionary zoning, and Connecticut's Albrecht v. Carlson (right to control money). Other cases for which only limited information is available cover topics of right to education, right to fair classification, right to treatment, right to just compensation, architectual barriers, and sterilization. Also listed are closed cases reported in earlier issues. (CL)

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MENTAL RETARDATION and the LAW

A Report on Status of Current Court Cases

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November 1974

This issue of "Mental Retardation and the Law" features an analysis of the Fifth Circuit's decision in *Donaldson v. O'Connor*, the first major right of treatment case to reach the United States Supreme Court, and *Wyatt v. Aderholt*, decided November 8, 1974.

Altogether this issue contains reports on ten new cases, updated information on thirty-four cases reported in previous issues of "Mental Retardation and the Law," and limited summaries of thirty-one other cases. Among the most important cases are *Welsch v. Likins* (right to treatment), *Townsend v. Clover Bottom* (peonage), *State of Wisconsin ex rel. Warren v. Nusbaum* (right to education), *in re Fisher* (right to counsel), and *McAuliffe v. Carlson* (right to control property).

U.S. DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE
Office of the Assistant Secretary for Human Development
President's Committee on Mental Retardation
Washington, D.C. 20201 U.S.A.

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I. FEATURE

ANALYSIS OF THE OPINIONS IN DONALDSON V. O'CONNOR AND WYATT V. ADERHOLT

Although the plaintiff in *Donaldson* was mentally ill rather than mentally retarded, this case is included because of its enormous precedential significance. *Donaldson* is the first case ever in which a former mental patient has been permitted to sue for (and has subsequently been awarded) money damages for being deprived of his liberty without treatment. Prior to this decision, only *habeas corpus* and injunctive relief have been awarded in such cases.

The plaintiff-appellee in *Donaldson v. O'Connor*, 493 F.2d 507 (1974), was civilly committed to the Florida State Hospital at Chattahootchee in January, 1957; diagnosed as a "paranoid schizophrenic." He remained in that hospital for the next 14 and ½ years, during which time he received little or no psychiatric treatment. Donaldson contended that he had a constitutional right either to be treated or to be released from the state hospital. He filed a damage action under 42 U.S.C. §1983 against hospital and state mental health officials who allegedly deprived him of his constitutional rights. A Federal jury returned a verdict of $28,500 in compensatory damages and $10,000 in punitive damages against two of the defendants-appellants, one of whom was Donaldson's attending physician and the other of whom was the clinical director of the hospital during part of the period of Donaldson's confinement.

This case was then appealed by the defendants to the Fifth Circuit, which in its recent decision, became the first Federal Court of Appeals to hold that the Fourteenth Amendment guarantees involuntarily civilly committed mental patients a right to treatment and which also held that the evidence presented by Donaldson to the trial court was sufficient to support the damages verdict in his case.

The nature of the conditions under which Donaldson was confined for almost 15 years were described by the Court as follows:

> "Donaldson received no commonly accepted psychiatric treatment. Shortly after his first mental examination, Donaldson, a Christian Scientist, refused to take any medication or to submit to electroshock treatments, and he consistently refused to submit to either of these forms of therapy. No other therapy was offered At trial, Gumanis mentioned 'recreational' and 'religious' therapy as forms of therapy given Donaldson; but this amounted to allowing Donaldson to attend church and to engage in recreational activities, privileges he probably would have been allowed in prison. In the oral argument on appeal the appellants' counsel made much of what they called 'milieu therapy' which they said was given Donaldson. This was nothing more than keeping Donaldson in a sheltered hospital 'milieu' with other mental patients; the defendants did not refer to anything specific about the 'milieu' that was in any special way therapeutic. Donaldson was usually confined in a locked room, where, according to his testimony, there were about sixty beds, with little more room between beds than was necessary for a chair; his possessions were kept under the bed. At night he was often awakened by some who had fits and by some 'who would torment other patients screaming and hollering'. Then there was 'the fear, always the fear you have in your heart, I suppose, when you go to sleep that maybe somebody would jump on you during the night'." (Footnote omitted.)

Based on this and other evidence, the Court concluded that Donaldson "received only the kind of subsistence-level custodial care he would have received in a prison, and perhaps less psychiatric treatment than a criminally committed inmate would have received."

After reviewing the transcript of the trial court proceedings, the Court of Appeals ruled that on the record as a whole, there was ample evidence to support the jury's reaching the following conclusions:

> "1. The defendants unjustifiably withheld from Donaldson specific forms of treatment (grounds privileges, occupational therapy, and the opportunity to talk with a psychiatrist)—Donaldson testified that in the 8 and ½ years he spent under one defendant's care, he did not speak with that defendant more than a total of two hours—an average of about 14 minutes a year. (*Id.*, at 514);
>
> "2. The defendants recklessly failed to attend to and treat Donaldson at precisely those junctures when treatment could have most helped Donaldson recover and therefore be released;
>
> "3. The defendants wantonly, maliciously, or oppressively blocked efforts by responsible and interested friends and organizations to have Donaldson released to their custody;
>
> "4. The defendants continued to confine Donaldson knowing he was not dangerous, or with reckless disregard for whether he was dangerous;
>
> "5. The defendants did not do the best they could with available resources."

Having determined that defendants knowingly and/or recklessly had denied Donaldson both treatment and release, the Court next turned to the "novel and important question whether civilly committed mental patients have a constitutional right to treatment." The Court held that "a person involuntarily civilly committed to a state mental hospital has a constitutional right to receive such individual treatment as will give him a reasonable opportunity to be cured or to improve his mental condition." In reaching this result, the Court first noted that civil commitment entails a "massive curtailment of liberty" in the constitutional sense and that it also involves severe stigmatization of affected individuals. The Court noted that the due process clause has the major role in regulating government actions affecting deprivations of liberty and went on to conclude that the due process clause guarantees a right to treatment under a two-part theory.

The first part of the theory, according to the Court, begins with the fundamental proposition that any non-trivial abridgement of liberty must be justified in terms of a permissible governmental goal. The Court noted that three distinct such goals are recognized by state commitment statutes: danger to self, danger to others, and, the need for treatment, or for "care," "custody" or "supervision." The Court divided these three basic grounds for commitment into two caregories—"one consisting of a 'police power' rationale for confinement, the other of a 'parens patriae' rationale." Citing *Jackson* v. *Indiana* for the proposition that "[a]t the least, due process requires that the nature and duration of commitment bear some reasonable relation to the purposes for which the individual is committed" (406 U.S. at 738), the Court held that where "as in Donaldson's case, the rationale for confinement is the 'parens patriae' rationale that the patient is in need of treatment, the due process clause requires that minimally adequate treatment be in fact provided."

The second part of the theory of a due process right to treatment was based on recognition that, under our system of justice, long term detention is, as a matter of due process, generally permitted only under three central limitations—that detention be in retribution for a specific offense; that it be limited to a fixed term; and that it be permitted after a proceeding where fundamental procedural safeguards are observed. According to the Court of Appeals, when these three limitations are absent, "there must be a quid pro quo extended by the government to justify confinement, and the quid pro quo most commonly recognized is the provision of rehabilitative treatment, or, where rehabilitation is impossible, minimally adequate habilitation and care, beyond the subsistence level custodial care that would be provided in a penitentiary." As authority for the second part of the theory, the Court cited a wide range of support from five major procedural contexts:

1. Habeas corpus actions brought by citizens held under provisions for various kinds of "non penal" confinement establishing that the very least required is that such persons be confined in a facility other than a prison;

2. Later cases expanding the view of the earlier "non penal" cases and holding that confinement must be held in places where the conditions are *actually* therapeutic;

3. Decisions upholding modern "non penal" statutes—notably sex offender and defective delinquent statutes—but adding the proviso that the constitutionality of such statutes is conditioned upon the *realization* of the statutory promise of rehabilitative treatment;

4. Cases where individuals under confinement have brought habeas corpus petitions challenging their confinement on the ground that they were not receiving treatment, and in all of which the courts have at least sustained the right of a petitioner to a hearing to develop the facts supporting his claim that he is not receiving treatment, although the right to treatment in such cases is usually either on statutory grounds or on ambiguous mixed statutory and constitutional grounds;

5. The spate of recent cases brought as class actions in Federal court, seeking broad forms of injunctive and declaratory relief requiring that adequate treatment be provided in state-run facilities.

According to the Court, "taken together, these five sets of cases constitute a near unanimous recognition that governments must afford a quid pro quo when they confine citizens in circumstances where the conventional limitations of the criminal process are inapplicable."

Having lost his appeal to the Fifth Circuit, one of the defendants below filed a petition for certiorari in the United States Supreme Court. On October 21, 1974, the Court granted the petition, indicating that it wanted to hear the case. The parties are currently preparing their briefs. Oral argument will be held some time in January or February.

Wyatt v. Aderholt[1]

On November 8, 1974, after a delay of over 23 months, the United States Court of Appeals for the Fifth Circuit, in a unanimous panel opinion written by Judge Wisdom, held that the Constitution guarantees persons civilly committed to state mental institutions a right to treatment.

The Mental Health Board and the Governor of Alabama (defendants in the District Court) had advanced six major contentions on appeal of the District Court's decision. They contended: (1) that the District Court erred in holding that civilly committed mental patients have a constitutional right to treatment; (2) that the Court lacked jurisdiction because the suit was in effect a suit against the state proscribed by the Eleventh Amendment; (3) that the case involved rights and duties not susceptible to determination by judicially ascertainable and manageable standards, and therefore, presented a non-justiciable controversy; (4) that the order of the District Court invaded a province of decision-making exclusively reserved to the state legislature; (5) that the plaintiffs were not entitled to equitable relief because they had adequate remedies at law to protect the rights there asserted; and, (6) that the District Court erred in awarding plaintiffs reasonable attorney's fee.

According to the Fifth Circuit, the basic legal contention in the *Wyatt* case was largely foreclosed by its recent decision in *Donaldson v. O'Connor*, 493 F.2d 507 (1974).

The Fifth Circuit in the *Wyatt* opinion briefly summarized *Donaldson* as follows:

> "In *Donaldson*, we held that civilly committed mental patients have a constitutional right to such individual treatment as will help each of them to be cured or to improve his or her mental condition. We reasoned that the only permissible justifications for civil commitment, and for the massive abridgments of constitutionally protected liberties it entails, were the danger posed by the individual committed to himself or to others, or the individual's need for treatment and care. We held that where the justification for commitment was treatment, it offended the fundamentals of due process if treatment were not in fact provided; and we held that where the justification was the danger to self or to others, then treatment had to be provided as the *quid pro quo* society had to pay as the price of the extra safety it derived from the denial of individuals' liberty."

The Fifth Circuit opinion in *Wyatt* notes, however, that Governor Wallace has made one argument not answered by the discussion in *Donaldson*. Governor Wallace challenged the assumption that the only permissible justifications for confinement are danger to self or others or need for treatment. Instead, the Governor suggested that the principal justification for commitment lies in the inability of the mentally ill and the mentally retarded to care for themselves, and that the families and friends of the disabled were "the true clients" of the institutional system. Obviously, if "need for care" is a justification for commitment, then it follows that the mere provision of custodial care is constitutionally adequate to justify continued confinement. However, after noting that the "kind of care that was provided at the Alabama hospitals was insufficient even to meet this more limited standard of 'adequate care'," the Fifth Circuit went on to reject the underlying premise that the need to

[1]The name Aderholt has been substituted for that of Stickney, whom he succeeded as Commissioner of Mental Health.

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care for the mentally handicapped—and to relieve their families, friends or guardians of the burdens of providing care—supplies a constitutional justification for civil commitment. According to the Court:

> "At stake in the civil commitment context, as we emphasized in *Donaldson*, are 'massive curtailments' of individual liberty. Against the sweeping personal interests involved, Governor Wallace would have us weigh the state's interest, and the interests of the friends and families of the mentally handicapped in having private parties relieved of the 'burden' of caring for the mentally ill. The state interest thus asserted may be, strictly speaking, a 'rational' state interest. But we find it so trivial beside the major personal interests against which it is to be weighed that we cannot possibly accept it as a justification for the deprivations of liberty involved.
>
> * * *
>
> ". . . our express holding in *Donaldson* and here rests on the *quid pro quo* concept of 'rehabilitative treatment, or, where rehabilitation is impossible, minimally adequate habilitation and care, beyond the subsistence level custodial care that would be provided in a penitentiary.' "

In addition to upholding the constitutional right to treatment, the Court of Appeals held that the suit was not barred by the Eleventh Amendment; that the right to treatment could be implemented through judically manageable standards; that the granting of relief did not invade a province of decision-making exclusively reserved for the state legislature; and that legal remedies such as individual *habeas* petitions or damage actions (as opposed to class action injunctive relief) were not adequate to solve the problem.

In holding that individual suits by mental patients would be inappropriate to assure *in advance* that mental patients will "at least have the chance to receive adequate treatment by proscribing the maintenance of conditions that foredoom all mental patients inevitably to inadequate mental treatment," the Fifth Circuit stressed that:

> ". . . mental patients are particularly unlikely to be aware of their legal rights. They are likely to have especially limited access to legal assistance. Individual suits may be protracted and expensive, and individual mental patients may therefore be deterred from bringing them. And individual suits may produce distorted therapeutic effects within an institution, since staff may tend to give especially good—or especially harsh—treatment to patients the staff expects or knows to be litigious."

Three issues of great concern were left undecided by the Court. First, the parties and amici had stipulated to a number of specific conditions which they agreed were necessary for a constitutionally acceptable minimum treatment program. But since these stipulations were not appealed by the State of Alabama, the Fifth Circuit did not need to and did not reach a decision as to whether the standards prescribed by the District Court were constitutionally minimum requirements. It should be noted that although the Fifth Circuit did not offer an opinion as to whether the specific *Wyatt* District Court standards are constitutionally required, it did unequivocably reaffirm its opinion, expressed in *Donaldson*, that the "right to treatment can be implemented through judicially manageable standards."

Secondly, the District Court had issued an opinion fixing the amount of attorney's fees due to plaintiffs from the defendant State at $36,744.62, and the State of Alabama had appealed the District Court's decision to award attorney's fees. The Fifth Circuit reserved decision on this issue pending decisions in two other attorney's fees cases which had been argued and submitted to the full Court in October, 1974, and which are expected to be decided shortly.

Finally, the Fifth Circuit declined to adjudicate "unnecessary and prematurely" possible serious constitutional questions presented by Federal judicial action ordering the sale of state lands, or altering the state budget, or which might otherwise arise in the problem of financing. The Fifth Circuit held that determination of good faith efforts by state authorities to insure the constitutional right to treatment should be made in the first instance by the District Court, and remanded the case to the District Court on relief issues. It did, however, hold that as a jurisdictional matter dictated by Federal statute, remedies of the type contemplated in previous District Court orders (*e.g.*, sale of state lands, or altering the state budget) are required to be determined by a District Court of three judges.

II. NEW CASES

A. RIGHT TO TREATMENT

ILLINOIS: *Nathan v. Levitt*, No. 74 CH 4080 (Circuit Court of Cook County) filed July 3, 1974.

Plaintiffs in this class action suit are institutionalized mentally retarded persons in the state of Illinois.

Defendants are the state officials responsible for the operation of state mental health treatment facilities.

Plaintiffs claim that defendants, in violation of the commands of the Illinois Mental Health Code and Illinois Constitution, have failed to provide "comprehensive and individualized" rehabilitation plans for mentally retarded residents of state institutions for the retarded. As a result, plaintiffs have attained no improvement in their mental condition and have in fact suffered deterioration in such condition as well as physical injury and abuse.

Plaintiffs seek declaratory and injunctive relief requiring defendants to develop programs of adequate rehabilitation as well as damages for the injuries suffered by them as a result of the lack of such rehabilitation in the past.

Plaintiffs have specifically reserved for trial in Federal court any subsequent Federal claims which they might have as a result of the same acts or omissions by the defendants.

OHIO: *Davis v. Watkins*, No. C 73-205 (United States District Court, Northern District, Ohio) decided September 9, 1974.

Plaintiffs in this *Wyatt*-type class action right to treatment suit are residents of the Lima State Hospital.

Defendants are the officials responsible for the administration of the hospital.

The Court, relying on *Wyatt*, granted summary judgment to plaintiffs and ordered the following relief:

1. Evaluation of all persons confined in the institution, by virtue of either civil or criminal proceedings, to determine whether they are mentally ill or retarded and in need of continuing commitment.

2. Provision of minimum constitutional standards for treatment including placement in the least restrictive alternative setting, development of individual treatment plans, treatment of patients in a "humane" psychological and physical environment, patient rights, care of patients' personal possessions, adequate diet and food services, and adequate physical facilities.

The Court ordered the appointment of a Special Master to govern implementation of these standards.

PENNSYLVANIA: *Halderman v. Pennhurst State School and Hospital*, No. 74-1345 (United States District Court, Eastern District, Pennsylvania) filed May 30, 1974.

Plaintiffs in this class action suit are residents of state institutions for the retarded in Pennsylvania.

Defendants are officials of the Pennhurst institution and of the Department of Public Welfare.

Plaintiffs claimed that they have been denied their right to treatment, right to refuse treatment and right to treatment in the least restrictive alternative. Plaintiffs also claim deterioration in their mental condition and physical harm due to mistreatment by employees of the institution.

Plaintiffs seek declaratory and injunctive relief as well as compensatory and punitive damages.

Defendants have filed a motion to dismiss, and the parties are now in the midst of a briefing schedule on that motion.

PENNSYLVANIA: *Waller v. Catholic Social Services*, No. 74-1766 (United States District Court, Eastern District, Pennsylvania) filed July 12, 1974.

Plaintiff in this suit was a mentally retarded resident of a state institution.

Defendants were the administrators of the institution.

Plaintiff claimed that she was denied the right to treatment in the least restrictive appropriate facility in that, despite repeated recommendations from the hospital staff, defendants failed to place her in a group home.

Plaintiff sought an order compelling the defendants to place her in a group home and damages for the harm she suffered by not being so placed.

As a result of negotiations, defendants placed her in a group home and she then voluntarily dismissed her lawsuit.

WASHINGTON: *Preston v. Morris*, No. 77-9700 (Washington Superior Court, King County) filed April 23, 1974.

Plaintiffs are mentally retarded persons with problems of sexual deviancy who are confined in state facilities for the retarded in Washington.

Defendants are the state officials responsible for the operation of facilities and programs for the retarded in the state of Washington.

Plaintiffs claim that defendants, in violation of both state law and the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution, are failing to provide them with treatment equal to the treatment provided intellectually normal persons exhibiting the same sexually deviant behavior.

Plaintiffs seek injunctive relief to provide them with adequate treatment for their problems.

Plaintiffs are presently developing standards to serve as the basis for the relief that they are seeking.

B. RIGHT TO JUST COMPENSATION FOR LABOR

INDIANA: *Sonnenburg v. Bowen*, No. 74 P.S.C. 1949 (Porter County Circuit Court, Indiana) filed October 9, 1974.

Plaintiffs are present and past residents of Dr. Norman M. Beatty Memorial Hospital.

Defendants are the governor and mental health commissioner of Indiana, who are responsible for the operation of the hospital.

Plaintiffs claim that they have performed labor for Beatty hospital without being paid just compensation for their work in violation of the Fair Labor Standards Act and the Fifth and Thirteenth Amendments to the United States Constitution. In addition, plaintiffs claim that the failure to pay just compensation violates their right to adequate treatment.

Plaintiffs seek declaratory and injunctive relief to compel the defendants to enforce the Fair Labor Standards Act. Additionally, they seek damages in the sum of Fifteen Million Dollars.

MAINE: *Jortberg v. Maine Department of Mental Health*, Civil Action No. 13-113 (United States District Court, Maine) consent decree June 18, 1974.

On June 18, 1974, the parties in this Federal suit entered into a consent decree compelling the state to pay the minimum wage to patient workers in state institutions for the mentally handicapped.

The decree provided, *inter alia:*

1. that the state pay the full minimum wage to any resident of an institution who performs "work" which was defined to include almost any kind of labor except those activities denominated "personal-housekeeping work" unless the Labor Department has certified that such resident may be paid a sub-minimum wage because of individual characteristics;

2. that residents be given the opportunity to apply for any job classification in the institution and that they be notified of such right;

3. that the officials of the institution refrain from punishing or withholding privileges for failure or refusal by residents to perform work.

A stipulation accompanying the consent decree set forth the violations of the Fair Labor Standards Act by the defendants.

C. RIGHT TO EDUCATION

CALIFORNIA: *West v. Secretary of Defense*, Civil Action No. 73-2589-DWW (United States District Court, Central District, California) filed April 5, 1974.

Plaintiffs in this suit are a class of learning disabled dependents of military personnel.

Defendant is the Secretary of Defense and other officials responsible for implementation of the Civilian Health and Medical Program for the Uniformed Services (CHAMPUS).

Plaintiffs are challenging a determination that special education programs for learning disabled children do not come within the program guidelines despite the fact that funds were provided for such programs until August of 1973.

The Court granted a preliminary injunction enjoining defendants from withholding funds for special education pending an administrative hearing to determine whether or not such educational programs are "medical treatment" or a result of "medical necessity" within the terms of the pertinent statute.

D. COMMITMENT LAWS

OHIO: *In re Fisher*, 39 Ohio St. 2nd 71, 213 N.E.2d 851 (Ohio 1974).

Petitioners in this case are residents of the Hawthornden State Hospital who were involuntarily civilly committed. They sought a writ of habeas corpus granting them release from the Hospital on the grounds that denial of the right to counsel in the civil commitment proceeding violated their constitutional right to due process of law. The Court of Common Pleas (the trial Court) denied the petition finding no constitutional violation. The Court of Appeals (an intermediate appellate court) reversed the decision of the trial court and granted the writ. The Ohio Supreme Court unanimously affirmed the Court of Appeals decision and held that persons being submitted to civil commitment proceedings must be informed of their right to counsel at the "earliest stage of the proceeding commensurate with the

individual's needs for preparation of a timely defense"; that counsel be appointed for indigent persons; and that counsel be given access to results of psychiatric interviews in preparation for commitment hearings.

In so ruling, the court extended the principle of right to counsel from the criminal and juvenile setting to the civil commitment setting.

E. RIGHT TO CONTROL MONEY

CONNECTICUT: *McAuliffe v. Carlson*, Civil No. 15,687 (United States District Court, Connecticut) decided May 30, 1974.

In this case, the District Court ruled that the Connecticut statute which provided for the appointment of the state Commissioner of Finance as conservator for the funds of residents of mental institutions whose assets totalled less than $5000 was unconstitutional. (*See Albrecht v. Carlson*, "Mental Retardation and the Law," July 1974, p. 13.)

The Court ruled that this procedure violated petitioners right to due process of law because the conservator was appointed without any hearing to determine that the resident was incompetent to manage his own financial affairs. The provision also violated the equal protection clause because other statutes required notice and hearing before a conservator could be appointed for other more affluent or non-institutionalized persons.

On another issue raised by plaintiffs, the Court ruled that provisions which required some, but not all prisoners transferred from penal institutions to mental hospitals, to pay for their room and board was a violation of the equal protection clause of the United States constitution.

III. UPDATED INFORMATION ON PREVIOUSLY REPORTED CASES

A. RIGHT TO TREATMENT

ALABAMA: *Wyatt v. Stickney*, 325 F.Supp. 781, 334 F.Supp. 373 and 387 (M.D. Ala., 1972) Appeal decided November 8, 1974. Civil Action No. 72-2634 (5th Circuit).

See the feature analysis of the decision of the Fifth Circuit (which is now reported as *Wyatt v. Aderholt*) at page 4 of this issue.

CALIFORNIA: *Joseph R. Revels v. Earl Brian, M.D.*, No. 658-044 (Superior Court of the State of California, City and County of San Francisco) filed March 22, 1973.

The last session of the California legislature passed A.B. 855 over the Governor's veto. This legislation provides that no state hospital can be closed without the approval of the legislature. Since this bill granted the same relief sought by plaintiffs in this suit, the case was dismissed pursuant to the following conditions:

1. That the suit would be expressly dismissed without prejudice, meaning that plaintiffs would not be precluded from refiling it if necessary.

2. That no notice to class members was required at the time of dismissal.

3. That any statute of limitations with regard to plaintiffs claims would be deemed tolled on the date of the filing of the complaints in this case.

Thus, further actions would not be barred by the running of the limitations period.

The suit is currently dormant, pending implementation of A.B. 855.

FLORIDA: *Donaldson v. O'Connor*, 493 F.2d 507 (5th Cir. 1974).

On October 21, 1974, the Supreme Court granted a writ of *certiorari*. This means that the Supreme Court has agreed to hear the case. Oral argument will be held sometime in January of 1975. See the analysis of the decision of the United States Court of Appeals at page 1 of this issue.

GEORGIA: *Burnham v. Department of Public Health of the State of Georgia*, 349 F.Supp. 1335 (N.D. Ga. 1972) appeal filed August, 1973, Civil Action No. 72-3110 (5th Circuit).

Reversed and remanded in accordance with *Wyatt* (p. 4).

ILLINOIS: *Wheeler v. Glass*, Civil Action No. 71-1677 (United States District Court, Illinois) filed November 13, 1970.

Following a five day jury trial in July, plaintiffs were awarded $6000 in damages, plus attorney's fees. In a post trial motion one of the defendants, a doctor for one of the state institutions, claimed that he was denied effective assistance of counsel in his representation by the Attorney General's office because of an alleged conflict of interest. Only that defendant has taken an appeal to the Seventh Circuit Court of Appeals. Thus far no briefs have been filed.

MARYLAND: *United States v. Solomon*, No. N-74-181 (United States District Court, Maryland) filed February 21, 1974.

Discovery is proceeding but no date has yet been set for trial.

MINNESOTA: *Welsch v. Likins*, Ruling on liability, 373 F.Supp. 487 (D. Minn. 1974). Final Order, October 1, 1974.

On October 1, 1974, the court issued findings of fact, conclusions of law, and an order. The court found that Cambridge lacked sufficient direct care staffing for purposes of basic custodial care or for effective habilitation of its residents. The court further found that the excessive and unsupervised use of seclusion at the institution without attempting less onerous means of controlling behavior is cruel and unusual punishment and violates the plaintiffs' right to the least restrictive alternative under the due process clause. The court further found that the use of tranquilizing drugs at the institution was improperly evaluated,

monitored and supervised and as such, violated the cruel and unusual punishment and due process clauses of the Constitution.

Extensive relief was ordered. The defendants were ordered to meet Federal intermediate care facility staffing requirements within five months and to also provide certain additional professional staff. This additional staff approximates the levels required by the Accreditation Council for Facilities for the Mentally Retarded.

In addition to the staffing requirements, the court directly ordered the defendants to provide individualized habilitation plans, extensive alterations in the facility's physical plan, air-conditioning in non-ambulatory units, carpeting in all residential and program areas, removal of bars, limitations on the use of underground tunnels for transporting residents, elimination of seclusion, tight controls and monitoring of physical and chemical restraints, provision of an adaptative wheelchair to all those who need one, and additional equipment and materials for program purposes. Finally, the court required defendants to devise a written plan to provide community placements for all residents at Cambridge who are capable of such placement. The plan is to specifically consider methods by which the severely and profoundly retarded persons can be placed in community facilities that are equivalent or superior to those offered at the state hospital.

NEBRASKA: *Horacek v. Exon*, Civil Action No. CV72-L-299 (United States District Court, Nebraska) filed September 28, 1972. Preliminary order, 357 F.Supp. 71 (D. Neb. 1973).

On June 4, 1974, the District Court denied defendants' motion for summary judgment ruling that the fact that parents voluntarily placed their children in the Beatrice State Home does not deny those children the right to complain of mistreatment nor does it remove the fact of state action.

While the court ruled that the case could proceed as a class action, the Nebraska Association for Retarded Children was dismissed as a plaintiff in that it did not adequately represent the class members.

Trial of the case has been set for December of 1974.

NEW YORK: *New York State Association for Retarded Children v. Rockefeller; Patricia Parisi v. Rockefeller*, 72 Civil Action No. 356 (United States District Court, Eastern District, New York) filed March 17, 1973. Preliminary relief, 357 F.Supp. 752 (E.D. N.Y. 1973).

Trial on the merits began on September 30, 1974, and proceeded for one week. It is to resume on November 11, 1974.

TENNESSEE: *Saville v. Treadway*, Civil Action No. Nashville (United States District Court, Middle District Tennessee) filed April 10, 1973. Decided March 8, 1974.

On September 18, 1974, the following brief "Consent Agreement and Order" was entered by the District Court.

"The original complaint in this case was filed April 10, 1973, alleging certain constitutional and statutory violations by the Defendants of the rights of mentally retarded citizens residing in Clover Bottom Developmental Center, Donelson, Tennessee. Prior orders have been entered in this case wherein provisions of T.C.A. Sec. 33-501 were declared unconstitutional and new admissions procedures were established to ensure that due process protections were accorded mentally retarded citizens in the admission process and establishing this case as a class action.

"The parties are now desirous of an amicable settlement of the remaining portion of the lawsuit and have reached the following understanding without waiving any claims or defenses heretofore asserted by them. The Defendants agree that in the past some residents of Clover Bottom Developmental Center have not been provided opportunities for habilitative services currently considered appropriate. Defendants further agree that at present possibly fifty percent (50%) of Clover Bottom Developmental Center residents are being institutionalized in an environment more restrictive to their liberty than is necessary if other appropriate alternatives existed. Plaintiffs are presently convinced of the good intentions of the named Defendants in ensuring that the rights of all mentally retarded citizens are protected and that all resources being made available to the Defendants are being used to ensure that community alternative facilities are created in order to decrease the resident population of Clover Bottom Developmental Center, and that proper services are made available to the mentally retarded residents of Clover Bottom Developmental Center.

"The parties are further agreed that mentally regarded persons admitted to Clover Bottom Developmental Center have a right to proper medical care and physical restoration and to such education, training, habilitation and guidance as will enable them to develop their individual ability and potential to the fullest possible extent, no matter how severe the degree of disability; and that such persons have a right to an environment least restrictive to their liberty in that individual freedom is to be restricted to no greater extent than is necessary and appropriate to provide habilitative services.

"It is therefore ORDERED, by agreement, that:

(1) It is declared that mentally retarded citizens admitted to Clover Bottom Developmental Center have a right to habilitative services as defined in the above agreement.

(2) It is further declared that such mentally retarded citizens have a right to receive habilitative services in the least restrictive alternative.

(3) The Defendants will, within four (4) months from the date of entry of this Order, submit to the Court a plan to implement the rights declared in paragraph (1) and paragraph (2) of this Order.

"It is further ORDERED, by agreement, that this case be and the same hereby is dismissed in its entirety, with prejudice, except that within eight (8) months of the date on which the Defendants file the plan referred to in paragraph (3) above, the Plaintiffs may move the Court to reset the case or the Court on its own motion may reset the case solely upon the issue of the adequacy of said plan. If no such motion is filed within said period of time, then this case shall stand dismissed, with prejudice, as to the issue of the adequacy of said plan also."

WASHINGTON, D. C.: *Robinson v. Weinberger*, No. CA 74-285 (United States District Court, District of Columbia) filed February 14, 1974.

No further developments since the July 1974 issue of "Mental Retardation and the Law."

B. RIGHT TO JUST COMPENSATION FOR LABOR

FLORIDA: *Roebuck v. Florida Department of Health and Rehabilitative Services*, Civil Action No. TCA 1041 (United States District Court, Northern District, Florida) filed July 6, 1972.

Plaintiffs have appealed to the 5th Circuit challenging the immunity from FLSA suits in Federal Court. The case has been placed on the summary calendar and will be decided without oral argument.

TENNESSEE: *Townsend vs. Clover Bottom*, No. A-2576 (Chancery Court, Nashville) filed May 22, 1972. Decided July 19, 1974 (Tennessee Supreme Court).

On July 29, 1974, the Tennessee Supreme Court upheld the trial court's ruling that residents of state mental institutions may sue the state in state court to enforce claims under the Fair Labor Standards Act. (*See* "Mental Retardation and the Law," July 1974.)

The Court rejected the state's claim that it was immune from suits to enforce such claims. It ruled that Congress, in passing the 1966 Amendments to the Fair Labor Standards Act (extending coverage to state run hospitals, etc.) had taken away the state's sovereign immunity from such suits. In so ruling, the Court relied on the concurring opinions of United States Supreme Court Justices Marshall and Stewart in *Employees of Missouri* (*See* "Mental Retardation and the Law," April 1973).

Unless overturned, this case opens the door to other suits in state court to enforce FLSA claims on the part of residents of mental institutions. The case has been remanded to the trial court for a decision on the merits.

C. RIGHT TO EDUCATION

CALIFORNIA: *California Association for Retarded Children v. State Board of Education*, No. 237277 (Superior Court, Sacramento County) filed July 27, 1973.

Discovery has been completed. A trial date has not been set.

CALIFORNIA: *Lori Case v. State of California*, Civil Action 101679 (Superior Court, Riverside County) filed January 7, 1972. Decided July 16, 1974.

The Court of Appeals upheld the determination of the trial court that the autistic child, Lori Case, should not be reinstated to the particular program in the school for the deaf. The court did rule, however, that she is entitled to an alternative educational program. Plaintiffs appealed to the California Supreme Court but their appeal was rejected.

COLORADO: *Colorado Association for Retarded Children v. State of Colorado*, No. C-4620 (United States District Court, Colorado) filed December 22, 1972.

On June 19, 1974, the District Court ruled that passage of the "Handicapped Children's Educational Act," C.R.S. 123-22-1 *et. seq.* did not render plaintiffs' claims moot. The Court found that prior statutes to provide equal education to handicapped children had not been implemented and stated that "The mere enactment of legislation without actual implementation does not render legal questions moot." It further ruled that plaintiffs' claims for compensatory damages were not moot as a result of the statute.

The parties are now briefing the issue of certification of the class with a hearing scheduled for November. They are also attempting to arrive at a pre-trial order. No trial date has yet been set.

FLORIDA: *State of Florida ex rel. Stein v. Keller* (formerly *Florida Association for Retarded Children v. State Board of Education*), No. 73-28747 (Circuit Court, Dade County) filed November 26, 1973.

The parties have agreed to a stipulation as to the identity of those individuals who are not now receiving adequate educational programming in state facilities for the mentally retarded. Further action will be needed, however, to compel the state to provide adequate programs for those individuals.

FLORIDA: *Wilcox v. Carter*, Civil Action No. 73-41 (United States District Court, Middle District, Florida) filed January, 1973.

No further developments since the January 1974 issue of "Mental Retardation and the Law."

MARYLAND: *Maryland Association for Retarded Children, Leonard Bramble, v. State of Maryland*, Equity No. 77676 (Circuit Court for Baltimore County) filed February 14, 1973. Decided April 9, 1974.

No appeal was taken from the Order and simultaneously with the issuance of the order, the State agreed to an expenditure somewhat in excess of six million dollars to bring the State and the counties into compliance with the decree by September of 1975, the principal implementation date provided for in the decree.

The original case remains pending in the Federal Court and it is anticipated that the public hearing/procedural due process claim will be dismissed as to the public school system by the end of this month upon agreement of the parties. This dismissal will be made in light of the adoption by the various governmental agencies of appropriate public hearing procedures. It is expected that the equal protection substantive due process aspect of the Federal case will remain dormant awaiting an appraisal by the plaintiffs of the situation in Maryland in September of 1975 as a result of the state court's decision.

NEW YORK: *Reid v. Board of Education of the City of New York*, No. 8742 (Commissioner of Education for the State of New York) decided November 26, 1973. Federal Court Abstention Order, 453 F.2d 238 (2d Cir. 1971).

The parties are actively working to enforce the rights declared by the Commissioner. (See "Mental Retardation and the Law," July 1974.)

NORTH CAROLINA: *Crystal Rene Hamilton v. Dr. J. Iverson Riddle, Superintendent of Western Carolina Center*, Civil Action No. 72-86 (United States District Court, Western District, North Carolina, Charlotte Division) filed May 5, 1972.

No further developments since the January 1974 issue of "Mental Retardation and the Law."

NORTH CAROLINA: *North Carolina Association for Retarded Children, James Auten Moore v. State of North Carolina Board of Public Education* (United States District Court, Eastern District of North Carolina, Raleigh Division) filed May 18, 1972.

Discovery is proceeding with a pretrial conference set for January 25, 1975. The state has passed a new right to education statute and the parties are evaluating its impact on the non-institutional part of the case.

NORTH DAKOTA: *North Dakota Association for Retarded Children v. Peterson*, Civil Action No. 1196 (United States District Court, North Dakota District, Southwestern Division) filed November 28, 1974.

Plaintiffs have notified the class members by publication. The last session of the legislature passed a right to education bill which provides for the relief being sought by plaintiffs except for the timetable for implementation which is set for July 1, 1980. Plaintiffs are awaiting a determination by the next session of the legislature as to the funding for implementation of this bill.

WISCONSIN: *Mindy Linda Panitch v. State of Wisconsin*, Civil Action No. 72-C-461 (United States District Court, Wisconsin) filed August 14, 1974.

Plaintiff utilized the procedures set up by the new Education for the Handicapped Statute to successfully challenge a decision of the School Board regarding Mindy Panitch's placement. A "multi-disciplinary team" had recommended that Mindy remain in a program in Pennsylvania and that the school board provide funds for her participation. The school board rejected the team's recommendation and plaintiffs appealed to the State Superintendent of Schools who took no action. Plaintiffs then went into court and obtained a ruling that the school board did not have the authority to overrule the decision of the multi-disciplinary team. As a result, Mindy has remained in the Pennsylvania program.

There have been no recent developments in the Federal court suit.

WISCONSIN: *State of Wisconsin ex rel. Warren v. Nusbaum*, _____Wisc. 2d _____, 219 N.W. 2d 577 (Supreme Court, 1974).

This action was brought by the Attorney General of Wisconsin to test the constitutionality of Chapter 89 of the Wisconsin Statutes, which provides in part that public funds may be paid to private schools which provide educational programs for mentally retarded persons. (*See* "Mental Retardation and the Law," July 1974.)

The Supreme Court of Wisconsin unanimously ruled that the statute does not violate either the United States or Wisconsin constitutions. The Court found that the primary purpose of the statute was to foster secular, not religious ends; that the primary effect is to educate retarded persons, not promote religion; and that the program will not cause the state to be excessively entangled with religion. Further, the program was not found to be for the "benefit of religion" in the terms of the Wisconsin Constitution.

With this ruling, the state officials are free to implement the program provided for by Chapter 89.

D. RIGHT TO FAIR CLASSIFICATION

CALIFORNIA: *Larry P. v. Riles*, Civil Action No. C-71-2270 (United States District Court Northern District, California) filed November 18, 1971. Preliminary Injunction Order, 343 F.Supp. 1306 (N.D. Cal. 1972).

On May 29, 1974, the District Court issued a memorandum opinion deciding several legal issues in favor of plaintiffs but postponing relief pending decision by the Ninth Circuit on the appeal of the original injunction. The requested relief includes redefinition of the plaintiffs' class to include all black children in classes for the educable retarded in the State of California (instead of just San Francisco); a statewide moratorium on the use of I.Q. testing to place black children in classes for the retarded; and remedial requirements of racial parity in educable mentally retarded (EMR) classes, i.e., that blacks in classes for the retarded cannot exceed their percentage in the school district as a whole by more than a "statistically significant amount."

On August 16, 1974, the Ninth Circuit affirmed the preliminary injunction of June 20, 1972 in a brief *per curiam* opinion.

On August 30, 1974, motions for the further relief and for contempt citations against the San Francisco school district were argued. Those motions are now being considered by the Court.

MASSACHUSETTS: *Stewart v. Philips*, Civil Action No. 70-1199-F (United States District Court, Massachusetts) filed September 14, 1970.

No further developments since the October 1973 issue of "Mental Retardation and the Law."

E. EXCLUSIONARY ZONING

OHIO: *Boyd v. Gateways to Better Living, Inc.*, Case No. 73-CI-531 (Mahoning County Court of Common Pleas) filed April 18, 1973.

The judgment of the trial court in favor of the group home operator was not appealed and is therefore final.

OHIO: *Driscoll v. Goldberg*, Case No. 72-CI-1248, 73-C.A. 59 Mahoning County Court of Common Pleas; Court of Appeals, Seventh District) filed August 15, 1972. Decided April 9, 1974.

No appeal was taken to the State Supreme Court. The decision of the Court of Appeals is therefore final. (See "Mental Retardation and the Law," July 1974.)

F. STERILIZATION

ALABAMA: *Katie Relf v. Caspar Weinberger*, Civ. No. 1557-73 (United States District Court, District of Columbia) dismissed October 5, 1973; reinstated October 8, 1973.

No further developments since the July 1974 issue of "Mental Retardation and the Law."

CALIFORNIA: *Holly Diane Kemp v. Joseph Kemp* (Guardian) 1/Civil 33721 (Court of Appeals, State of California) filed March 29, 1972.

The date for oral argument not yet been set.

NORTH CAROLINA: *Nial Ruth Cox v. A.M. Stanton, M.D.*, CA 800 (United States District Court, Eastern District, North Carolina) filed July 12, 1973. Appeal Pending, United States Court of Appeal, Fourth Circuit.

The case was dismissed by the District Court on the ground that the statute of limitations had expired. The court ruled that the time for filing suit began to run when the injury occurred. Plaintiffs have appealed to the Fourth District, arguing that the time for filing should not have begun to run until the injury was discovered. Thus, the complaint was filed within the time allotted by the statute of limitations. The case is now pending in the Fourth Circuit.

NORTH CAROLINA: *Trent v. Wright*, No. (United States District Court, Eastern District, North Carolina) filed January 18, 1974.

No further developments since the July 1974 issue of "Mental Retardation and the Law."

WASHINGTON, D. C.: *National Welfare Rights Organization v. Caspar Weinberger*, No. 74-243 (United States District Court, District of Columbia) filed February 6, 1974.

No further developments since the July 1974 issue of "Mental Retardation and the Law."

G. RIGHT TO CONTROL MONEY

CONNECTICUT: *Albrecht v. Carlson*, No. H-263 (United States District Court, Connecticut) filed December 13, 1973.

Negotiations between state officials and the plaintiff class have broken down. Accordingly, plaintiffs have decided to seek final judgment in line with the decision in *McAuliffe v. Carlson*, reported at page 10 of this summary.

IV. RECENT CASES FOR WHICH "MENTAL RETARDATION AND THE LAW" HAS ONLY LIMITED INFORMATION. (Where appropriate, more complete summaries will be presented in subsequent issues.)

A. RIGHT TO EDUCATION

CALIFORNIA: *Burnstein v. Kipp*, No. R-19266 (Superior Court, Contra Costa) filed Dec. 31, 1970.

Pending hearing.

CALIFORNIA: *David P. v. State Department of Education*, Civil No. 658826 (Superior Court, San Francisco County) filed June 14, 19[illegible].

The School has been enjoined from expelling plaintiff without [illegible]rocess hearing.

HAWAII: *Silva v. Board of Education*, Civil No. 73-3799 ( ) filed April 12. 1973.

The United States District Court for Hawaii abstained in this case (*Kekahuna v. Burns*, Civil No. 72-3799) and plaintiffs refiled in state court. The case is awaiting trial on the merits.

KENTUCKY: *Kentucky Association for Retarded Citizens v. Kentucky State Board of Education*, C.A. No. 435 (United States District Court, Eastern District, Kentucky)

Pre-trial negotiations are proceeding.

LOUISIANA: *Marcombe v. Department of Education*, Fed. No. 73-102 (United States District Court, Middle District, Louisiana) filed October 31, 1973.

Pending.

MICHIGAN: *Fletcher v. Board of Education*, No. A 741 00530 AW (Circuit Court, Kalamazoo County, Michigan) filed March 14, 1974.

In this case a single plaintiff seeks to enforce the right to an appropriate educational program guaranteed by state law. The parties are in the pre-trial stage.

NEVADA: *Brandt v. Nevada*, Civil No. R-2779 (United States District Court, Nevada) filed December 22, 1973.

NEW YORK: *In re Apple*, 73 Misc.2d 553, 342 N.Y.S.2d 352 (Family Court, Kings County, 1973).

Under New York statute, the state must pay for the education of even those handicapped children who receive Public Assistance.

NEW YORK: *In re Downey*, 72 Misc.2d 772, 340 N.Y.S.2d 687 (Family Court, New York, 1973).

This court affirmed that handicapped children have the right to an education equal to that of non handicapped children. Furthermore, parents of handicapped children cannot be forced to pay tuition based on "need" since handicapped children have an equal right to free public education.

NEW YORK: *In re K*, 74 Misc.2d 872, 347 N.Y.S.2d 271 (Family Court, King's County, 1973).

Parents of handicapped children cannot be denied reimbursement for educational expenses on the ground that they submitted their claim too late, where the state was unable to provide a program for the child in a public school.

NEW YORK: *In re Kirschner*, 74 Misc.2d 20, 344 N.Y.S.2d 164 (Family Court, Monroe County, 1973).

Parents of handicapped children cannot be required to pay tuition based on "need" where the state does not provide appropriate educational programs for the handicapped in public schools.

OHIO: *Cuyahoga County Association for Retarded Children and Adults v. Essex*, C.A. No. C74-587 (United States District Court, Northern District, Ohio) filed June 28, 1974.

This is a class action Right to Education suit. It is in the pre-trial stage.

PENNSYLVANIA: *Commonwealth v. Payne*, No. 905 C.D. 1974 (Commonwealth Court of Pennsylvania) filed 1974.

This suit challenges the practice of requiring retarded children to go to a residential facility in order to obtain an equal educational program. It is based on the theory of "least restrictive alternative."

TENNESSEE: *Rainey v. Tennessee Department of Education*, No. A-3100 (Chancery Court, Davidson County, Tennessee) Consent decree entered July 25, 1974.

This decree established the following principles:

(1) All handicapped children of school age have a right to a free education pursuant to Tennessee state law;

(2) Handicapped children should be educated in regular classroom situations wherever possible; and

(3) The state compulsory attendance laws apply to handicapped children.

TENNESSEE: *Rainey v. Watkins*, Civil No. 77620-2 (Chancery Court, Shelby County, Tennessee) writ of Mandamus issued, April 6, 1973.

Plaintiffs obtained an order compelling the Memphis City Board of Education to perform a census of handicapped children as required by Tennessee statutes.

B. RIGHT TO FAIR CLASSIFICATION

ARIZONA: *Guadalupe Organization v. Tempe Elementary School District No. 3*, No. Civ. 71-435 PWX (United States District Court, Arizona) settled with court approval, May 9, 1972.

CALIFORNIA: *Diana v. State Board of Education*, C-70 37 RFP United States District Court, Northern District, California) settled with court approval, February 5, 1970.

CALIFORNIA: *Ruiz v. State Board of Education*, No. 218294 (Superior Court, Sacramento County) filed Dec. 16, 1971.

These three cases involve challenge to the use of allegedly culturally biased intelligence tests which result in the improper placement of children from Spanish and other non-English speaking families in special education classes. (See Larry P. v. Riles, page 17 of this summary.)

C. RIGHT TO TREATMENT

HAWAII: *Gross v. State of Hawaii*, Civil No. 43090 (Circuit Court, Hawaii) filed September 17, 1974.

This is a class action right to treatment suit alleging, *inter alia*

(1) Inadequate treatment programs;

(2) Inadequate staff and facilities;

(3) Failure to provide less drastic alternatives.

MARYLAND: *MARC v. Solomon*, CA No. N-74-181, N-74-228 (United States District Court, Maryland) filed 1974.

This is a case challenging institutional practices in Maryland. It is in the pre-trial stage.

MASSACHUSETTS: *McElroy v. Goldmark*, C.A. No. 74-2768 (United States District Court, Massachusetts) filed July 24, 1974.

NEW YORK: *In re D.*, 70 Misc. 2d 953 (N.Y. 1973).

The court ruled that residents of Willowbrook were not under the jurisdiction of the Family Court and that in any event the state of New York could not be charged with neglect under terms of statutes governing neglect of children by their parents or guardians.

TEXAS: *Jenkins v. Crowley*, CA No. 3-74-394C (United States District Court, Northern District, Texas) filed September 17, 1974.

In this *Wyatt*-type class action, plaintiffs seek a declaratory judgment and injunctive relief to redress violations of their rights within institutions.

WASHINGTON: *Boulton v. Morris*, No. 781659 (Washington Superior Court, King County) filed June , 1974.

This is a right to treatment suit challenging the state's failure to provide guidance, education, individualized treatment and rehabilitation as required by statute.

D. RIGHT TO JUST COMPENSATION

INDIANA: *Hartnett v. Murray*

This suit seeks damages for failure to pay the minimum wage to institution residents.

WISCONSIN: *Wiedenfelder v. Kidulis*, 43 U.S.L.W. 2110 (E.D. Wis., August 21, 1974).

Plaintiffs have filed a class action suit alleging that they have been forced to work for inadequate wages in violation of the Fair Labor Standards Act and the Thirteenth Amendment to the United States Constitution. The court ruled that if these allegations could be proven, the plaintiffs would be entitled to relief. Thus, defendants' motion to dismiss was denied.

E. ARCHITECTURAL BARRIERS

CALIFORNIA: *Selph v. Council of the City of Los Angeles*, No. (United States District Court, Central District, California) filed January , 1974.

This case asserts the right to accessibility to voting places by handicapped persons.

F. STERILIZATION

INDIANA: *A.L. v. G.R.H.*, C.A. No. 1-1273 A 213 (Court of Appeals, 1st District).

The court ruled that a parent lacks legal authority to have a child sterilized. This decision has been appealed.

MICHIGAN: *Densmore v. Yudashkin*, No. (United States District Court, Western District, Michigan) filed April , 1974.

This case challenges the constitutionality of the Michigan sterilization statute and seeks compensatory damages.

OHIO: *Wade v. Bethesda*, 337 F.Supp. 671 (S.D. Ohio 1971).

A judge may be liable for damages where he orders sterilization under his "equity" powers since this is acting outside the scope of his authority and thus deprives him of judicial immunity.

PENNSYLVANIA: *Serena v. Leezer*, C.A. No. 74-313 (United States District Court, Western District, Pennsylvania) filed , 1974.

This case challenges the constitutionality of the Pennsylvania sterilization statute.

V. CLOSED CASES REPORTED IN EARLIER ISSUES OF "MENTAL RETARDATION AND THE LAW"

A. RIGHT TO TREATMENT

ILLINOIS: *Rivera v. Weaver*, Civil Action 72C135

MASSACHUSETTS: *Ricci v. Greenblatt*, Civil Action No. 72-469-T (United States District Court, Massachusetts) filed Feb. 7, 1972. Consent Decree entered Nov. 12, 1973.

PENNSYLVANIA: *Janet D. v. Carros*, No. 1079-731 (Court of Common Pleas, Allegheny County, Family Division, Juvenile Section) filed June 26, 1973. Decided March 29, 1974.

B. RIGHT TO JUST COMPENATION FOR LABOR

IOWA: *Bennan v. State of Iowa*, No. 73-1500 (United States Court of Appeals, Eighth Circuit) decided February 26, 1973.

MISSOURI: *Employees of the Department of Public Health and Welfare, State of Missouri v. Department of Public Health and Welfare of the State of Missouri*, U.S. , 93 S.Ct. 1614 (1973)

WASHINGTON, D. C.: *Souder v. Brennan*, Civil Action No. 482-73 (United States District Court, District of Columbia) filed March 13, 1973. Decided November 14, 1973.

C. RIGHT TO PUBLIC EDUCATION

CONNECTICUT: *Seth Kivel v. Dr. Bernard Nemoitan*, 143913 (Superior Court, Fairfield County, Connecticut) decided July 18, 1972.

MICHIGAN: *Harrison v. State of Michigan*, 350 F.Supp. 846 (E.D. Mich. 1972).

NEW YORK: *Piontkowski v. John Gunning and the Syracuse School District* (Commissioner of Education, State of New York) filed August 4, 1972.

NEW YORK: *In the Matter of Peter Held*, Civil Action No. H-2-71, H-10-71 (Family Court of the State of New York, Westchester County) November 29, 1971.

PENNSYLVANIA: *Pennsylvania Association for Retarded Children v. Commonwealth of Pennsylvania*, 334 F. Supp. 1257 (E.D. Pa. 1971).

WEST VIRGINIA: *Doe v. Jones* (State Superintendent of Schools) decided January 4, 1974.

WASHINGTON, D. C.: *Mills v. Board of Education of the District of Columbia*, 348 F.Supp. 866 (D.D.C. 1972).

D. CUSTODY

IOWA: *In the Interest of Joyce McDonald, State of Iowa v. David McDonald*, Civil Action No. 128-55162 (Supreme Court of Iowa) October 18, 1972.

IOWA: *In the Interest of George Franklin Alsager, State of Iowa v. Alsager*, Civil Action No. 169-55141 (Supreme Court of Iowa) October 18, 1972.

E. COMMITMENT LAWS

INDIANA: *Jackson v. Indiana*, 406 U.S. 715 (1972).

WEST VIRGINIA: *State ex rel. Willard Miller v. Jenkins*, 203 S.E. 2d 353 (1974).

WISCONSIN: *State ex rel. Matalik v. Schubert*, 57 Wis. 2d 315, 204 N.W.2d 13 (Wisconsin Supreme Court, 1973).

WISCONSIN: *State ex rel. Gerald Haskins v. County Court of Dodge County*, 62 Wis.2d 250, 214 N.W.2d 575 (Wisconsin Supreme Court, 1974).

F. EXCLUSIONARY ZONING

CALIFORNIA: *Defoe v. San Francisco Planning Commission*, Civ. No. 30789 (Superior Court of California) filed August 17, 1970.

MICHIGAN: *Doe v. Damm*, Complaint No. 627 (United States District Court, Eastern District, Michigan) filed March 8, 1973.

WISCONSIN: *Browndale International Limited v. Board of Adjustment*, 60 Wis.2d 182, 208 N.W.2d 121, cert. denied U.S. , 94 S.Ct. 1933 (1974).

G. RIGHT TO FAIR CLASSIFICATION

LOUISIANA: *Lebanks v. Spears*, 60 F.R.D. 135 (E.D.La. 1973).

H. ARCHITECTURAL BARRIERS

OHIO: *Friedman v. County of Cuyahoga*, Case No. 895961 (Court of Common Pleas, Cuyahoga County, Ohio) Consent Decree entered November 15, 1972.

WASHINGTON, D. C.: *Urban League v. WMATA*, Civil No. 1776-72 (United States District Court, District of Columbia) filed April 14, 1972.